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**MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY**

United States District Court		District Southern District of New York (SDNY)	
Name (under which you were convicted): Daniel B. Karron		Docket or Case No.: 07 CR 00541-01 (RPP)	
Place of Confinement: Probation, Eastern District of New York, FPC Alderson, WV		Prisoner No.: 60101-054	
UNITED STATES OF AMERICA		Movant (include name under which you were convicted)	
v.	DANIEL B. KARRON		

MOTION

- (a) Name and location of court that entered the judgment of conviction you are challenging: United States District Court, Southern District of New York, 500 Pearl Street, New York, NY 10007

- (b) Criminal docket or case number (if you know): 07 CR 00541-01 (RPP)
- (a) Date of the judgment of conviction (if you know): June 11, 2008 (verdict)

- (b) Date of sentencing: October 27, 1008 (Sentencing Amended)
- Length of sentence: 15 Months; 7.5 Months Incarceration, 7.5 Months Home Confinement, 3 Years F
- Nature of crime (all counts): 18 U.S.C. 6 6 6 Misapplying Grant Funds

- (a) What was your plea? (Check one)
(1) Not guilty ☒ (2) Guilty ☐ (3) Nolo contendere (no contest) ☐
(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, what did you plead guilty to and what did you plead not guilty to? not applicable

- If you went to trial, what kind of trial did you have? (Check one) Jury ☒ Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing? Yes ☐ No ☒
8. Did you appeal from the judgment of conviction? Yes ☒ No ☐
9. If you did appeal, answer the following:
- (a) Name of court: Second Circuit Court of Appeals
- (b) Docket or case number (if you know): 08-5287-cr
- (c) Result: Judgment of the district court AFFIRMED by detailed order of the court without opinion
- (d) Date of result (if you know): October 7, 2010
- (e) Citation to the case (if you know): United States of America -against- Daniel B. Karron
- (f) Grounds raised: _____
1. Whether an intent to defraud is an element of the offense of
misapplication of funds under 18 U.S.C. § 666(a)(1)(A); and
2. Whether 18 U.S.C. § 666 is unconstitutionally vague.
- _____
- _____
- _____
- (g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☒ No ☐
- If "Yes," answer the following:
- (1) Docket or case number (if you know): No. 09-847
- (2) Result: Denied petition for writ of certiorari
- _____
- (3) Date of result (if you know): SCOTUS Docket Feb 22, 2010, Docketed Feb 24, 2010 Second
- (4) Citation to the case (if you know): Daniel B. Karron, Petitioner v. United States
- (5) Grounds raised: In a prosecution for misapplication of funds under 18 U.S.C. § 666(a)(1)(A),
must the government prove that the defendant converted those funds for personal
use, or the use of a third party, and acted with an intent to defraud or deprive the
rightful owner of the same?
- _____
- _____
- _____
10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications concerning this judgment of conviction in any court?
- Yes ☐ No ☒
11. If your answer to Question 10 was "Yes," give the following information:
- (a) (1) Name of court: _____
- (2) Docket or case number (if you know): _____
- (3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket or case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application? Yes ☐ No ☒

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

U.S. DISTRICT COURT

WESTERN DISTRICT OF TEXAS

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Funds considered misappropriated were in fact property of Karron
and did not belong to the government

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Personal Earned Salary, budgeted, advanced and tax paid, are personal property of Karron. These were
the funds used by Karron to pay project overhead and personal costs. Evidence consists of (but not

limited to) approved budgeted salary line, contemporaneous signed time sheets, signed paychecks,
withholding shown on paychecks, withholding tax transmittal checks and forms (state and federal),

quarterly withholding tax returns (State and Federal), and journal entries on CASI books and
adjustments on withholding tax returns made in subsequent quarters. Finally, the rent paid by CASI,

using after tax Karron funds, forwarded to CASI, written on CASI general corporate funds and drawn on

CASI corporate checks, payable to Karron, were reclassified as Salary by the government in its own
exhibit Ex 114. Karron was convicted mainly if not exclusively by Exhibit 114 but analysis of the numbers

did not reveal this fact until after the trial and was not part of any appeal.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Appeals attorneys were constrained
by the lack of forensic evidence and analysis by the two forensic expert witnesses standing by for
the trial. Issues in ineffective assistance of defense counsel vis-a-vis failure of defense to mount
forensic accounting defense detailed below.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND TWO: The grant funds were not spent beyond the statutory flexibility limits

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The total spending was within the acceptable statutory and ATP variation limits of plus and minus 10% between any budget categories.

The main basis for Grounds two is that the base for the percentage variation must necessary and logically be the grant budget, not solely the government's funded amount, but the first year budget

including co-funding and all direct costs and indirect costs. On that full the grant is within budget. If the change basis is the federal share advanced to date only, then most would be out of budget in the

beginning, when the percentage basis is small and as the change base expanded, would gradually fall within budget as total spending accumulated.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: n/a

Name and location of the court where the motion or petition was filed: n/a

Docket or case number (if you know): n/a

Date of the court's decision: n/a

Result (attach a copy of the court's opinion or order, if available): n/a

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Conviction foundation laid on erroneous, misleading, and false data causing plain error

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The foundation of the Defendant's conviction rested on GX110 and GX114. GX114 does not add up, and appears to be made up. Hints of this were acknowledged by the trial judge, but the full extent was

not known until after conviction with a comprehensive forensic accounting by Dunlevy, admitted into evidence in the collateral civil attack cited in the attached Memorandum of Fact and Law..

(b) Direct Appeal of Ground Three:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: _____

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND FOUR: Ineffective Assistance of Defense Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The defense counsel asked to be relieved of the case just prior to the start of the case for insufficient funding. The Defendants only significant asset, Karron's apartment was liened, and every computer, hard drive and laptop in the apartment were seized in a prior raid, without regard to the ownership of the equipment or its source (grant or personal funds). Because of that, the Karron had to pay 30,000 to a government computer forensic data recovery company to recover Karron's own business records and

defense data from Karron's own computers.

Karron had to build new computers to house and reconstruct the 10 terabytes of disk images from the Karron's company computer RAID (Redundant Arrays of Independent Disks). Defense counsel applied to be relieved from the case because of lack of sufficient payment. Karron's apartment was sold to fund data recovery, but the proceeds were insufficient to pay both the data recovery and the requested fee for counsel.

Counsel did not engage the two forensic accounting experts brought in to audit and review the grant, did not challenge lack of tracing of funds requirement, and did not present alternative spending theory to counter Exhibit 114.

(b) Direct Appeal of Ground Four:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: Appeals attorneys were selected by counsel, and they choose to attack the law rather than facts. When asked why in private conversations, both young attorneys stated they got too much work from defense counsel to go up against him in public and risk damaging their main referrer.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

(2) If your answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: _____

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the judgment you are challenging? Yes ☐ No ☒

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. _____

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: Ronald Rubinstein, Esq

(b) At arraignment and plea: Ronald Rubinstein, Esq

(c) At trial: Ronald Rubinstein, Esq

(d) At sentencing: Ronald Rubinstein, Esq

(e) On appeal: Ronald Rubinstein, Esq. Laura Oppenheim, Esq. Marshall Mintz, Esq.

(f) In any post-conviction proceeding: _____

(g) On appeal from any ruling against you in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: _____

(b) Give the date the other sentence was imposed: _____

(c) Give the length of the other sentence: _____

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

bar your motion.* This motion is timely and is not unduly burdensome.

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief: Vacate Conviction

or any other relief to which movant may be entitled.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct
and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on _____
_____ (month, date, year).

Executed (signed) on _____ (date).

Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not
signing this motion. _____

IN FORMA PAUPERIS DECLARATION

See attached I.F.P. Declaration

[Insert appropriate court]

* * * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

9113 1 22 11:11

CLERK OF COURT

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